IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.9134 OF 2005

Seemaben Shankerlal Patel .. ..Petitioner

Versus

Heerachand Chhogmalji .. ..Respondent

Mr.S.J.Lulia for petitioner

Mr.J.J.Shah for respondent

CORAM : P.V.KAKADE, J.

DATE : 28TH MARCH,2006

P.C.:

1. Heard both sides.

2. Rule, rule made returnable forthwith by consent.

3. The petitioner-plaintiff has filed this petition challenging the order passed by the trial court discharging the notice i.e. Int. Notice No.572 of 2005 in pending R.A.E.& R. Suit No.165/485 of 1998 rejecting the plea for making amendment in the plaint.

3. The suit filed by the petitioner-plaintiff against

the respondent-defendant is for eviction from the suit premises under the provisions of the Bombay Rent Act, 1947 on various grounds including eviction, non user of the suit premises, arrears of rent and illegally carrying out additions and alterations of permanent nature in the suit premises without permission of the plaintiff. There are also other grounds to the effect that the defendant has caused waste and damage to the suit property and also on the ground of causing nuisance and annoyance.

4. Today we are concerned with the submission made on behalf of the petitioner to the effect that on 19.7.2003 at 11.00 a.m. the defendant has started illegal work of construction of permanent nature without his permission. The details are given in the application in respect of the suit alterations and additions which are being carried out by the defendant-tenant. For that purpose the application for amendment was made in order to bring on record the subsequent events which have taken place. The application was contested by the defendant inter alia, submitting that it was illegal and without any legal foundation. The learned trial judge after hearing both the parties came to the conclusion that if the amendment was allowed it would effect the cause of action. Moreover, the cross examination of the plaintiff has already taken and at that stage the amendment could not be allowed.

5. Now, it is needless to mention that the alleged subsequent event is dated 19.7.2003 which the plaintiff wants to incorporate in the body of the plaint. While challenging the petition, advocate for the respondents vehemently urged that this fact which is sought to be introduced by way of amendment is already mentioned in the affidavit of evidence by the plaintiff. However, it is needless to mention that the plaintiff could not be allowed to mention this fact without pleading and therefore, I have no doubt whatsoever that in order to bring on record these facts, which are very much relevant for adjudication of the dispute effectively, are required to be brought up in the pleading by way of amendment.

6. In the result, Rule is made absolute. The order passed by the trial court in Int. Notice No.572 of 2005 is set aside. That notice is made absolute. The petitioner’s amendment application is allowed and amendment to be carried out within four weeks from the date of this order. Thereupon the respondent shall be at liberty to file additional written statement and thereupon the trial court may consider framing of additional issues and then proceed with the matter. With these directions the petition stands dismissed with no order as to costs.